

United States District Court
MIDDLE DISTRICT OF TENNESSEE (NASHVILLE DIVISION)

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

MAY 21 2010

UNITED STATES OF AMERICA

BY _____
DEPUTY CLERK

V.

CRIMINAL COMPLAINT

KENNETH B. SMITH

Case Number: 10-4047 JSB

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about May 20, 2010 through on or about May 21, 2010 in Lawrence County, in the Middle District of Tennessee defendant(s) did,

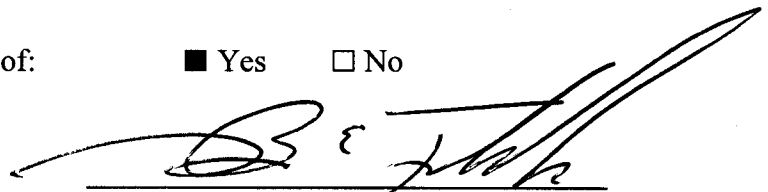
unlawful attempt to employ, use, persuade, induce, entice, or coerce a sixteen year old minor to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct knowing or having reason to know that such visual depiction would be transported or transmitted using any means or facility of interstate or foreign commerce

in violation of Title 18 United States Code, Section(s) 2251(a). I further state that I am a Special Agent, FBI and that this complaint is based on the following facts:

See Attached Affidavit

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ No



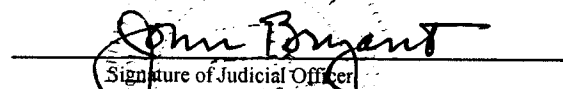
Signature of Complainant
Brian Fazenbaker
Special Agent, FBI

Sworn to me and subscribed in my presence,

May 21, 2010
Date

at Nashville, Tennessee
City and State

John S. Bryant, United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT OF BRIAN FAZENBAKER
Federal Bureau of Investigation

Brian Fazenbaker, being first duly sworn on oath, states as follows:

1. I am a Special Agent with the Federal Bureau of Investigation and have been employed as such for approximately fifteen years.
2. This affidavit is submitted in support of a Criminal Complaint for the arrest of **KENNETH B. SMITH**, for the following offense: Attempted Production of Child Pornography in that on or about May 20, 2010, in the Middle District of Tennessee and elsewhere, Kenneth B. Smith did unlawfully attempt to employ, use, persuade, induce, entice, or coerce a sixteen year old minor to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct if that person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce, in violation of 18 U.S.C. § 2251(a).
3. The following information contained in this affidavit is based on my training and experience, my personal participation in this investigation and information provided to me by other law enforcement officials. Unless otherwise indicated, where I have referred to written or oral statements, I have summarized them in substance and in part, rather than verbatim. Not all of the facts of the investigation known to me are contained herein, only those necessary to establish probable cause for the arrest of Kenneth B. Smith.
4. On May 17, 2010, an adult female who lives in Lawrence County, Tennessee with her sixteen year old daughter (hereinafter "Mother" and "Girl"), filed a complaint with the Lawrence County Sheriff's Department in Lawrence County, Tennessee with regard to her daughter.
5. The sixteen year old girl had received a letter from an individual she knew as "Kenny," which contained six (6) pictures depicting a white male displaying his penis, including one photo depicting the same individual ejaculating. The white male depicted in the photographs has distinctive tattoos on his arm, one of which appeared to be a tattoo of an eagle's head on the individual's forearm.
6. During an interview with the girl, she stated that she had been engaged in online internet conversations with an individual she knew as "Kenny" for approximately one month. She stated that these online conversations were occurring on a social networking site known as "airg.com," which is specifically for use with cellular telephones. On this social networking site, the girl's profile information clearly states that she is (16) sixteen years of age. During the online conversation with this male subject, "Kenny" identified himself as Kenny Smith and utilized the screen name/profile name of "youngman." "Kenny" told the girl that he was twenty-five years old. The girl stated that approximately a week to two weeks after

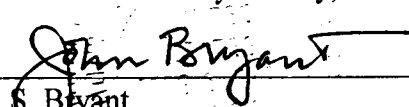
beginning these online conversations with "Kenny," he began to request nude photographs of the girl. She stated that she refused to provide "Kenny" with nude photographs of herself and made numerous excuses as to why she was not able to send these photographs as requested. "Kenny" told her numerous times that he intended to send the girl naked photographs of himself. "Kenny" later mailed a letter to the girl at her home address, which letter contained the above mentioned photographs. The letter was post marked from Mid Hudson, New York. The girl stated that she left this letter and photographs on a piece of furniture by her bed after reviewing the letter. Her mother saw the letter and photographs, pulled the girl out of school, and went to the Lawrence County Sheriff's Department to report the delivery of this letter and photographs to her minor daughter.

7. On May 19, 2010, a Special Agent with the Tennessee Bureau of Investigation (TBI) met with the mother and daughter, at which time the girl allowed the TBI agent to observe communications between the girl and the aforementioned male subject, which had occurred on "airg.com" on May 19, 2010. While observing these communications, the TBI agent noted that this subject, whose profile name was "youngman," identified himself as Kenneth Smith to the girl, and provided her with his address as 28 Snow Terrace Apartment 102, Poughkeepsie, NY 12601.
8. After viewing the prison-like tatoos and knowing that the subject lived in New York, agents contacted the New York State Division of Parole and discovered that they do have an individual by the name of Kenneth Smith on parole. On May 19, 2010, the TBI agent contacted the New York State Division of Parole and spoke with a Senior Parole Officer, who explained that the Kenneth Smith who was on parole with them had the same address as the girl was given, i.e. 28 Snow Terrace Apartment 102/ Poughkeepsie, NY 12601. The parole officer also provided photographs of Smith's tattoos, which had been documented by the New York State Division of Parole. One of these tattoos appeared to be consistent with the tattoo in the photographs sent to the girl by Smith. Smith had served approximately twenty eight years in prison for second degree murder.
9. After learning of the address of Kenneth Smith, officers determined that the address of Kenneth Smith (28 Snow Terrace Apartment 102, Poughkeepsie, NY 12601) is a "Transitional Residence" for individuals who have been released from prison or other transient individuals.
10. On May 19, 2010, the TBI agent received consent from the girl and her mother to assume the identity of the girl on "airg.com," so as to engage in a conversation with "Kenny," using the screen name "youngman," on the site in an undercover capacity. The TBI agent was able to engage in conversation with this individual, who sent messages to the undercover agent requesting the girl to send photographs of herself to him. Smith specifically requested photographs of the girl's breasts and vagina and requested she also send images of herself digitally penetrating her vagina.

11. During this undercover conversation, Smith was informed that the girl was sixteen years of age. Even after being informed of this, Smith continued to request nude photographs of the girl performing sexual acts. During undercover conversations with Smith, Smith stated that he intended to travel to the girl's location and referenced their involvement in sexual activity upon his arrival.
12. Later, during the evening hours of May 20, 2010 and the early morning hours of May 21, 2010, Smith spoke specifically of sexual activity that he intended to perform upon the sixteen year old girl upon his arrival to see her. Smith also asked additional questions of whom he believed to be the girl, about when she was going to be able to print the pictures that she had taken of herself naked to send to him. Smith asked the girl about how she felt about having sex with him and an additional female. The undercover agent, acting as the girl, told Smith that she would engage in sexual contact with another female and stated that she knew a 15 year old girl whom she went to school and who probably would engage in sexual contact with the two of them. Smith stated that he did wish to engage in sexual contact with both juvenile females and requested pictures of the second female's breasts and vagina, even after being informed of that the second female was only fifteen years old. Smith told the girl that she could show her fifteen year old friend the pictures of his penis that he had mailed to the girl. During these conversations, Smith stated that he had mailed additional pictures of himself to the girl, along with money. He also stated that he could mail pictures of himself to the fifteen year old girl as well.
13. During the undercover conversations May 21, 2010, Smith provided a telephone number so that the fifteen year old girl could text message him photographs of her breasts and vagina along with the girl's breasts and vagina. Smith additionally wanted to electronically send naked pictures of himself to the fifteen year old girl. Smith requested that photographs of the two girls' breasts be taken by way of the fifteen year old girl's cellular phone camera in the school bathroom and then send them to him on his telephone number. The telephone number that Smith provided to the girl is the same telephone number that was provided to the TBI agent by the New York State Division of Parole as the telephone number they had on file for Kenneth Smith.
14. All of the above referenced undercover conversations occurred on the internet via a social networking site by the name of "airg.com."


Brian Fazenbaker
Special Agent, Federal Bureau of Investigation

Subscribed and Sworn to
before me this 21st day of May, 2010


John S. Bryant
United States Magistrate Judge
Middle District of Tennessee